

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

CHARLES NEWTON,

Plaintiff,

v.

STATE OF NEVADA et al.,

Defendants.

2:16-cv-01824-KJD-GWF

**SCREENING ORDER
ON AMENDED COMPLAINT**

Plaintiff, who is a prisoner in the custody of the Nevada Department of Corrections (“NDOC”), has submitted an amended civil rights complaint pursuant to 42 U.S.C. § 1983 and has filed two applications to proceed *in forma pauperis*, a motion to amend complaint, a motion of inquiry, and a motion for appointment of counsel. (ECF No. 4, 5, 5-1, 8, 9, 10, 11). The Court now addresses the applications to proceed *in forma pauperis* and screens Plaintiff’s amended civil rights complaint pursuant to 28 U.S.C. § 1915A.

I. *IN FORMA PAUPERIS* APPLICATION¹

Before the Court is Plaintiff’s application to proceed *in forma pauperis*. (ECF No. 10). Based on the information regarding Plaintiff’s financial status, the Court finds that Plaintiff is not able to pay an initial installment payment toward the full filing fee pursuant to 28 U.S.C. § 1915. Plaintiff will, however, be required to make monthly payments toward the full \$350.00 filing fee when he has funds available.

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¹ Plaintiff has filed two applications to proceed *in forma pauperis*. (ECF No. 8, 10). The Court denies the August 2016 one (ECF No. 8) as moot and will treat the September 2016 one (ECF No. 10) as the operative application to proceed *in forma pauperis*. The Court also denies Plaintiff’s inquiry about his financial certificates (ECF No. 9) as moot because Plaintiff has filed a fully complete application to proceed *in forma pauperis* (ECF No. 10) in this case.

II. SCREENING STANDARD

Federal courts must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1),(2). *Pro se* pleadings, however, must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) the violation of a right secured by the Constitution or laws of the United States, and (2) that the alleged violation was committed by a person acting under color of state law. See *West v. Atkins*, 487 U.S. 42, 48 (1988).

In addition to the screening requirements under § 1915A, pursuant to the Prison Litigation Reform Act (PLRA), a federal court must dismiss a prisoner's claim, if "the allegation of poverty is untrue," or if the action "is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2). Dismissal of a complaint for failure to state a claim upon which relief can be granted is provided for in Federal Rule of Civil Procedure 12(b)(6), and the court applies the same standard under § 1915 when reviewing the adequacy of a complaint or an amended complaint. When a court dismisses a complaint under § 1915(e), the plaintiff should be given leave to amend the complaint with directions as to curing its deficiencies, unless it is clear from the face of the complaint that the deficiencies could not be cured by amendment. See *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

Review under Rule 12(b)(6) is essentially a ruling on a question of law. See *Chappel v. Lab. Corp. of America*, 232 F.3d 719, 723 (9th Cir. 2000). Dismissal for failure to state a claim is proper only if it is clear that the plaintiff cannot prove any set of facts in support of the claim that would entitle him or her to relief. See *Morley v. Walker*, 175 F.3d 756, 759 (9th Cir. 1999). In making this determination, the court takes as true all allegations of material fact stated in the complaint, and the court construes them in the light most favorable to the plaintiff.

1 See *Warshaw v. Xoma Corp.*, 74 F.3d 955, 957 (9th Cir. 1996). Allegations of a *pro se*
 2 complainant are held to less stringent standards than formal pleadings drafted by lawyers.
 3 See *Hughes v. Rowe*, 449 U.S. 5, 9 (1980). While the standard under Rule 12(b)(6) does not
 4 require detailed factual allegations, a plaintiff must provide more than mere labels and
 5 conclusions. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A formulaic recitation
 6 of the elements of a cause of action is insufficient. *Id.*

7 Additionally, a reviewing court should “begin by identifying pleadings [allegations] that,
 8 because they are no more than mere conclusions, are not entitled to the assumption of truth.”
 9 *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). “While legal conclusions can provide the
 10 framework of a complaint, they must be supported with factual allegations.” *Id.* “When there
 11 are well-pleaded factual allegations, a court should assume their veracity and then determine
 12 whether they plausibly give rise to an entitlement to relief.” *Id.* “Determining whether a
 13 complaint states a plausible claim for relief . . . [is] a context-specific task that requires the
 14 reviewing court to draw on its judicial experience and common sense.” *Id.*

15 Finally, all or part of a complaint filed by a prisoner may therefore be dismissed *sua*
 16 *sponte* if the prisoner’s claims lack an arguable basis either in law or in fact. This includes
 17 claims based on legal conclusions that are untenable (e.g., claims against defendants who are
 18 immune from suit or claims of infringement of a legal interest which clearly does not exist), as
 19 well as claims based on fanciful factual allegations (e.g., fantastic or delusional scenarios).
 20 See *Neitzke v. Williams*, 490 U.S. 319, 327-28 (1989); see also *McKeever v. Block*, 932 F.2d
 21 795, 798 (9th Cir. 1991).

22 **III. SCREENING OF AMENDED COMPLAINT²**

23 In the amended complaint, Plaintiff sues multiple defendants for events that took place
 24 while Plaintiff was incarcerated at High Desert State Prison (“HDSP”). (ECF No. 5-1 at 1).
 25 Plaintiff sues Defendants State of Nevada, the NDOC, NDOC Director James Dzurenda, and
 26 Reentry Coordinator Pardee. (*Id.* at 1-2). Plaintiff alleges three counts and seeks monetary

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 28 ² The Court grants Plaintiff’s motion to amend his complaint (ECF No. 5). The Court will screen the amended complaint (ECF No. 5-1).

1 damages. (*Id.* at 6, 9).

2 The amended complaint alleges the following: On April 12, 2016, Plaintiff entered
3 HDSP and was not permitted to work or program because he needed a social security card.
4 (*Id.* at 3). By not working, Plaintiff lost work credits up to six days a month. (*Id.*) Plaintiff kited
5 Pardee for the proper forms but did not receive an answer or an application. (*Id.*) This
6 prolonged Plaintiff's imprisonment due to the loss of work time credits. (*Id.*) Pardee's actions
7 have caused Plaintiff to worry about his release date. (*Id.* at 5). Plaintiff alleges cruel and
8 unusual punishment (Count I), mental anguish (Count II), and libel (Count III). (*Id.* at 4-6).

9 The Court dismisses the complaint in its entirety because Plaintiff fails to state any
10 cognizable claim based on the allegations in his complaint. First, Plaintiff fails to state a claim
11 for libel. Libel, a form of defamation, requires a false and defamatory statement. See *Flowers*
12 *v. Carville*, 292 F.Supp.2d 1225, 1232 (D. Nev. 2003), *aff'd*, 161 F.App'x 697 (9th Cir. 2006).
13 There are no allegations of false statements in this case.

14 Second, to the extent that Plaintiff is attempting to allege a due process violation based
15 on his alleged right to work in prison, this claim also fails. The U.S. Supreme Court has held
16 that the U.S. Constitution "does not guarantee good-time credit for satisfactory behavior while
17 in prison." *Wolff v. McDonnell*, 418 U.S. 539, 557 (1974). The Constitution also does not grant
18 a prisoner an independent right to prison employment. *Collins v. Palczewski*, 841 F.Supp.
19 333, 336 (D. Nev. 1993). Moreover, Nevada's statutes and prison administrative regulations
20 do not create an independent liberty right to prison employment. See *id.* at 336-340. As such,
21 Plaintiff fails to state a due process claim because he fails to establish a liberty interest in
22 prison employment.

23 Third, Plaintiff cannot allege any constitutional violations for Pardee's failure to send
24 him a social security form. As such, the Court dismisses this case in its entirety for failure to
25 state a claim. The Court dismisses the case with prejudice as amendment would be futile.

26 **IV. MOTION FOR APPOINTMENT OF COUNSEL**

27 Plaintiff has filed a motion for appointment of counsel. (ECF No. 11). A litigant does
28 not have a constitutional right to appointed counsel in 42 U.S.C. § 1983 civil rights claims.

1 *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). Pursuant to 28 U.S.C.
2 § 1915(e)(1), “[t]he court may request an attorney to represent any person unable to afford
3 counsel.” However, the court will appoint counsel for indigent civil litigants only in “exceptional
4 circumstances.” *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) (§ 1983 action). “When
5 determining whether ‘exceptional circumstances’ exist, a court must consider ‘the likelihood
6 of success on the merits as well as the ability of the petitioner to articulate his claims *pro se*
7 in light of the complexity of the legal issues involved.” *Id.* “Neither of these considerations is
8 dispositive and instead must be viewed together.” *Id.* In the instant case, the Court does not
9 find exceptional circumstances that warrant the appointment of counsel. The Court denies the
10 motion for appointment of counsel.

11 **V. CONCLUSION**

12 For the foregoing reasons, IT IS ORDERED that the application to proceed *in forma*
13 *pauperis* (ECF No. 8) is denied as moot.

14 IT IS FURTHER ORDERED that the motion for inquiry (ECF No. 9) is denied as moot.

15 IT IS FURTHER ORDERED that Plaintiff’s application to proceed *in forma pauperis*
16 (ECF No. 10) without having to prepay the full filing fee is granted. Plaintiff shall **not** be
17 required to pay an initial installment fee. Nevertheless, the full filing fee shall still be due,
18 pursuant to 28 U.S.C. § 1915, as amended by the Prisoner Litigation Reform Act. The movant
19 herein is permitted to maintain this action to conclusion without the necessity of prepayment
20 of fees or costs or the giving of security therefor. This order granting *in forma pauperis* status
21 shall not extend to the issuance and/or service of subpoenas at government expense.

22 IT IS FURTHER ORDERED that, pursuant to 28 U.S.C. § 1915, as amended by the
23 Prisoner Litigation Reform Act, the Nevada Department of Corrections shall pay to the Clerk
24 of the United States District Court, District of Nevada, 20% of the preceding month’s deposits
25 to the account of **Charles Newton, #1063241** (in months that the account exceeds \$10.00)
26 until the full \$350 filing fee has been paid for this action. The Clerk shall send a copy of this
27 order to the attention of **Albert G. Peralta, Chief of Inmate Services for the Nevada**
28 **Department of Prisons**, P.O. Box 7011, Carson City, NV 89702.

1 IT IS FURTHER ORDERED that, even if this action is dismissed, or is otherwise
2 unsuccessful, the full filing fee shall still be due, pursuant to 28 U.S.C. §1915, as amended by
3 the Prisoner Litigation Reform Act.

4 IT IS FURTHER ORDERED that the motion to amend complaint (ECF No. 5) is granted.

5 IT IS FURTHER ORDERED that the Clerk of the Court shall file the amended complaint
6 (ECF No. 5-1).

7 IT IS FURTHER ORDERED that the amended complaint (ECF No. 5-1) is dismissed
8 in its entirety, with prejudice and without leave to amend, as amendment would be futile for
9 failure to state a claim.

10 IT IS FURTHER ORDERED that this Court certifies that any *in forma pauperis* appeal
11 from this order would **not** be taken "in good faith" pursuant to 28 U.S.C. § 1915(a)(3).

12 IT IS FURTHER ORDERED that the Clerk of the Court shall enter judgment
13 accordingly.

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15 DATED: This 21 day of February, 2017.

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18 United States District Judge
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